UNRWA DISPUTE TRIBUNAL

Case No.: UNRWA/DT/LFO/2009/15
Judgment No.: UNRWA/DT/2012/013
Date: 27 February 2012
Original: English

Before: Judge Bana Barazi
Registry: Amman
Registrar: Laurie McNabb

SAID
v.
COMMISSIONER GENERAL OF THE
UNITED NATIONS RELIEF AND WORKS
AGENCY FOR PALESTINE REFUGEES

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
W. Thomas Markushewski
Introduction

1. This is an application by Fadi Said (the “Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), not to extend his fixed-term appointment with the Agency upon its expiration.

2. Pursuant to General Assembly Resolution 63/253 of 24 December 2008, the Joint Appeals Board was abolished as of 1 July 2009. Effective 1 June 2010, as set out in Area Staff Regulation 11.1, the Agency established the UNRWA Dispute Tribunal (the “Tribunal”) and all appeals pending with the Joint Appeals Board on the date of its abolition, including this application, were transferred to the Tribunal.

3. As a transitional measure, Article 2, paragraph 5 of the Statute of the Tribunal provides that the Tribunal shall be competent to hear and pass judgment on cases filed prior to the establishment of the Tribunal and in respect of which no report of the Joint Appeals Board (JAB) has been submitted to the Commissioner-General.

Facts

4. On 15 December 2006, the Applicant was engaged by the Agency as a daily paid employee in Beirut, Lebanon. On 9 January 2008, he was employed by the Agency as an Information Systems Technical Assistant (“ISTA”) on a fixed-term appointment expiring 13 December 2008 for the Palestine Refugees Records Project (“PRRP”). This appointment was subsequently extended until 31 December 2008, and the Applicant continued in the post until its elimination on 28 February 2009.
5. By e-mail dated 10 October 2008, the Applicant’s supervisor, the Field Information and Communication Technology Officer (the “FICTO”) advised the Applicant that his performance was unsatisfactory, adding:

I would like to inform you that your performance as an ICT staff member is not satisfied, and I am sending this letter to you after many attentions mentioned to you. I would like to inform you also that I have received many complains from the Relief Department [the ‘host’ department for the PRRP] about your technical/personal behaviors and the quantity of services you provide as an ISTA-PRRP [sic].

6. By memorandum dated 3 February 2009, the Chief, Field Relief and Social Services Programme advised the Field Administration Officer that due to the completion of the project, the PRRP funded posts of: (i) Scanning Team Supervisor; (ii) Information Systems Technical Assistant; (iii) two Senior Scanning Clerks; and (iv) four Scanning Clerks were to be abolished effective 1 March 2009 and the incumbents’ appointments, including the Applicant’s, were to be terminated.

7. By letter dated 13 February 2009, the Field Personnel Officer, Lebanon (the “FPO/L”) advised the Applicant of the following:

the post of IS Technical Assistant, which you presently occupy … will not be extended beyond 28 February 2009.

Accordingly, … your services with the Agency will be terminated effective C.O.B [sic] 28 February 2009, date of expiration of your contract.

8. On 17 February 2009, the Applicant applied to be transferred to the post of Information Systems Help Desk Assistant.

9. By memorandum dated 21 February 2009, the FICTO did not recommend the Applicant’s transfer because of the Applicant’s unsatisfactory performance and failure to improve, notwithstanding meetings he had had with the Applicant in connection with his poor performance.
10. On 28 February 2009, the Applicant was separated from service with the Agency upon the expiry of his fixed-term appointment.

11. By letter dated 5 March 2009, the FPO/L reminded the Applicant that:

    … staff members hired on project posts (posts with an expiry date and funded by project funds), shall not be retained, transferred, or treated as redundant.

12. By letter dated 18 March 2009, the Applicant requested the Director of UNRWA Affairs, Lebanon (“DUA/L”) to review his case, saying he had been promised that he would be employed by the Information Systems Office (“ISO”) at the end of the PRRP. He attached an e-mail dated 14 June 2007 from the PRRP Project Manager (Mr. Baker) to the FICTO (Mr. Hanafi), stating:

    From my understanding, ISTA [i.e. the Applicant] is reporting to the FISO and I think we have a plan for them to go back to ISO after we finish the PRRP Project “Suhail, please correct me if I am wrong”

    Let me see what I can do and I will come back to you.

13. By e-mail dated 2 April 2009, the Applicant reminded DUA/L of the FICTO’s alleged assurances regarding employment in the ISO and inquired why an UNRWA staff member from the roster was selected for the post when he had applied for a transfer to that post.

14. By letter dated 14 April 2009, the DUA/L responded to the Applicant’s 18 March 2009 letter, noting that the communications relied upon by the Applicant were not official communications by the Agency but rather a reflection of the personal views of two staff members, and that the Applicant’s transfer to a fixed general fund position was not possible.
15. By e-mail dated 6 May 2009, the Applicant requested the Commissioner-General to intervene in his case because he expected to be employed, “I planned my life according to their letter and their promises” with the ISO upon the completion of the PRRP.

16. By e-mail dated 9 May 2009, the Commissioner-General advised the Applicant that his case had been appropriately addressed by the Lebanon Field Office.

17. Unsatisfied with this response, the Applicant again asked the Commissioner-General by e-mail dated 10 May 2009 to determine whether the correspondence, which the Applicant interpreted as constituting a promise that he “will go back automatically to ISO after PRRP”, was an official document or the personal opinions of staff members.

18. By letter dated 21 May 2009, the DUA/L reiterated the Agency’s position as set out in his letter of 14 April 2009 that the communications relied upon by the Applicant were not official Agency communications but rather the reflection of personal views of two staff members.

19. The Applicant filed his appeal dated 27 May 2009 to the JAB.

**Applicant’s contentions**

20. The Applicant essentially contends that he was promised he would be employed by the ISO at the end of the PRRP. He requests the Tribunal to order the Respondent to employ him in the ISO and pay him compensation for the period during which he was unemployed.

**Respondent’s contentions**

21. The Respondent essentially contends that the non-extension of the Applicant’s appointment was properly made, and that the remedies sought by the Applicant have no legal basis. The Respondent requests the Tribunal to dismiss the application.
Status Conference

22. On 7 February 2012, the Tribunal held a status conference at the UNRWA Lebanon Field Office in Beirut, specifically to ask the parties if they had any new relevant evidence to submit in this case.

23. The Applicant referred to four audio recordings he had allegedly made of telephone conversations with staff members, without their knowledge, regarding his claims. The Applicant provided no explanation as to why he had not produced this evidence to the Tribunal, if indeed he deemed it relevant, prior to the status conference so that the Respondent as well as the Tribunal could take cognizance of its relevance, if indeed such evidence existed.

24. The Applicant also expressed indignation at being questioned by Lebanese intelligence officials, claiming it was meant to intimidate staff members. He accused the Agency of corruption, and of leaking examinations, however without any supporting evidence. Whilst these are not issues raised by the Applicant as grounds for relief in his application, and noting that the Tribunal will not as a general rule review additional claims that are not relevant to the discretionary administrative decision under review, the Tribunal for clarification purposes would like to point out that the Applicant had sent many e-mails in 2009 to various staff members and managers of UNRWA in Lebanon, ending invariably with the following line: “Don’t Forget That U R Going To Die”. When shown one of such e-mails at the status conference, the Applicant smiled and said that this was nothing, that it was just his signature. Strangely enough, the Applicant did not make the connection that he may have been questioned because of such a threat sent to the recipients of his e-mails.
Considerations

Main Issues

Was the Respondent’s decision not to extend the Applicant’s fixed-term appointment upon its expiry properly made?

25. Looking at the legal and administrative framework applicable in the case at bar, the Tribunal notes that Area Staff Regulation 1.2 provides:

   Staff members are subject to the authority of the Commissioner-General and to assignment by him to any of the activities or offices of the Agency in or outside the area of its operations…

26. Area Staff Regulation 4.3, in relevant part, also provides:

   Due regard shall be paid in the appointment, transfer and promotion of staff to the necessity for securing the highest standards of efficiency, competence and integrity.

27. Area Staff Rule 109.5 on Expiry of Fixed-Term Appointment provides:

   1. A fixed-term appointment shall expire without prior notice on the expiration date specified in the letter of appointment.

   2. A staff member holding a fixed-term appointment shall automatically be separated from Agency service on the expiration date of that appointment, unless he/she has been reappointed or otherwise separated prior to that date.

28. Area Staff Circular No. 4/95, Area staff posts and appointments, informed all staff that:
6. Extension of appointments will depend on the Agency’s continuing need for the post, the availability of funding and the staff member’s performance.

29. The Applicant’s Letter of Appointment specified:

You are hereby offered a **Fixed-Term Appointment** as an Area staff member … subject to the following terms and conditions:

* * *

3. **TENURE OF APPOINTMENT**

This appointment is for a fixed-term starting on 09.01.2008 and expiring on 13.12.2008

* * *

8. **SPECIAL CONDITIONS**

This appointment does not carry an expectation of renewal or conversion to any other type of appointment…

30. The United Nations Appeals Tribunal has consistently held that, in general, fixed-term appointments do not give rise to any expectation for renewal, but instead expire naturally without notice on the last day of the appointment, *Syed* 2010-UNAT-061, *Beaudry* 2010-UNAT-085 and *Koumoin* 2011-UNAT-119.

31. Furthermore, Area Staff Circular No. 4/95, paragraph 6, indicates clearly and unequivocally that fixed-term contracts will be extended only if all of the three following conditions are met:

(i) the Agency’s continuing need for the post;
(ii) the availability of funding;
(iii) the staff member’s performance.

32. Assuming the Applicant had a satisfactory performance, which he did not judging from the e-mail sent to him by the FICTO on 10 October 2008, referred to in paragraph 5,
as well as FICTO’s memorandum of 21 February 2009, referred to in paragraph 9, the other two conditions (continuing need for the post and availability of funding) had not been met. Therefore, the Applicant’s post and assignment naturally expired as the consequence of the “completion of the project”, just like the other PRRP funded posts referred to above in paragraph 6.

33. The Applicant is reminded that a legal expectancy for renewal is not created by efficient or even outstanding performance, as held by the former United Nations Administrative Tribunal (“UN Administrative Tribunal”) in Judgment No. 1399 (2008). The United Nations Appeals Tribunal confirmed this jurisprudence when it held in Ahmed 2011-UNAT-153, paragraph 47, that:

We concur with the former Administrative Tribunal which held that, unless the Administration has made an “express promise … that gives a staff member an expectancy that his or her appointment will be extended”, or unless it abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member’s fixed-term appointment is not unlawful.

34. In the case at bar, the Tribunal notes no such promise on the part of the Agency. As indicated in the Agency’s response to the Applicant, and in the Respondent’s reply as well as in the Counsel for the Respondent’s statement at the status conference, the Applicant cannot take the e-mail query between one project manager (himself on a PRRP fixed-term contract) and a staff member, referred to in paragraph 12, as a clear action by the Agency to renew the Applicant’s fixed-term appointment. First, the correspondence does not emanate from someone who had any authority to make any promise so as to create any binding obligation on the Agency. Second, the correspondence represents the personal views of two UNRWA staff members exchanged between them and is not addressed to the Applicant. Third, a mere reading of the correspondence clearly reveals that the PRRP Project Manager was not sure that there was a plan for the ISTAs to return to the ISO at the end of the PRRP since, as he wrote to the FICTO, he would “see what [he] can do and [he] will come back to you”. Even by a large stretch of the imagination,
the Tribunal fails to see how or why the Applicant considered such an e-mail to be a “clear action by the Administration” or an “express promise” to employ him.

35. The Tribunal is of the belief that the Applicant has failed to meet the burden of proof with regard to the Agency allegedly creating a legal expectation that his appointment would be renewed or that he would be employed or transferred to another post in the Agency. Furthermore, the Tribunal is concerned with the manner in which the Applicant obtained this e-mail, since he was not copied on it, and there is no evidence in the file that any party to this e-mail has forwarded it to the Applicant, as he alleged at the status conference.

Was the Respondent’s decision not to extend the Applicant’s fixed-term appointment tainted with improprieties?

36. The jurisprudence of the United Nations Appeals Tribunal is clear in according the Agency broad discretionary authority in the application of the Agency’s Staff Regulations, Rules and Directives, and provides that, while the exercise of that discretionary authority is not unfettered, it will not be disturbed unless the decision was arbitrary or capricious, was motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law. When an Applicant alleges that the decision is tainted with improprieties, he/she must produce convincing evidence in support of his/her allegation, as held by the UN Administrative Tribunal in Judgment No. 553, Abrah (1992).

37. At the status conference, the Applicant stated repeatedly in a quasi-obsessive manner that he felt tricked and deceived by the Agency for broken promises. If all the evidence he could muster consists of the e-mail referred to above, the Tribunal finds that clearly it is no evidence - convincing or otherwise - of any irregularities on the part of the Agency in not extending the Applicant’s fixed-term appointment. Also at the status conference, the Applicant referred to audio recordings he had made of conversations as proof that he was promised employment or transfer. The Tribunal would like to point out
that it has concerns over the manner in which such evidence would have been obtained, i.e. its legality.

38. The Tribunal finds that the Applicant has failed to discharge his onus of proof that the Respondent’s decision not to extend his fixed-term appointment - upon its expiration and the completion of the project under which the Applicant’s post was funded - was tainted by arbitrariness or capriciousness, prejudice or improper motivation, procedural irregularity, or error of law. The Tribunal finds that the Respondent’s decision was properly based on the application of Area Staff Rule 109.5, and was correctly implemented in accordance with clause 7(a) of the Applicant’s Letter of Appointment.

Does the relief sought by the Applicant have any legal basis?

39. The Applicant requested the Tribunal to order the Agency to re-employ him and to pay him compensation for the period during which he was unemployed.

40. As the Respondent’s decision not to extend the Applicant’s fixed-term appointment has been properly made and as it was not tainted with any impropriety, the relief sought by the Applicant has no basis in fact or in law.

Conclusion

41. Given all the above, the Tribunal determines that the application has no merit. The application is dismissed in its entirety.

(Signed)  
Judge Bana Barazi  
Dated this 27th day of February 2012

Entered in the Register on this 27th day of February 2012

(Signed)  
Laurie McNabb, Registrar, UNRWA DT, Amman